

PATENT
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: GALLI et al

Serial No.: 09/647939

Filing Date: October 18, 2001

For: SOURCE OF NUCLEI FOR
NUCLEAR TRANSFER

Attn: Daniel Stemmer
Legal Examiner
PCT Legal Affairs
CP2, Room 7C08
Box Petitions - Fee

PETITION UNDER 37 C.F.R. 1.182

Commissioner for Patents
Washington, DC 20231

Sir:

RECEIVED
14 MAR 2002
Legal staff
International Division

This petition deals with a situation not specifically provided for in the regulations and hence undersigned counsel characterizes it under Rule 182. The appropriate fee under §1.17(h) is attached hereto, however, should it become detached, authorization is herewith given to charge undersigned counsel's deposit account 06-1358.

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130.00 OP

BACKGROUND

Counsel deals with a client in England that wanted counsel to nationalize the equivalent of PCT/EP99/02624 and this nationalization, under Chapter II had to be done by October 20, 2000. For many months counsel was writing on this case with the English associate and had set up a file, attorney's reference P64474US0 and it was left that counsel would file this application by its due date of October 20, 2000. A week before, by fax, counsel received filing instructions to nationalize PCT/EP99/02624 but unfortunately there was no cross-reference to counsel's existing case P64474US0. Therefore, the Application Department at counsel's office set up a new file, P66004US0 and filed this

application for nationalization on October 18, 2000 which was given Serial No. 09/647939 ('939). Meanwhile, the docket date for counsel's reference P64474US0 came up and to avoid abandonment, counsel nationalized the same PCT application on October 20, 2000 which was given Serial No. 09/673236 ('236). Therefore, counsel through inadvertent error had twice nationalized PCT/EP99/02624 in the U.S. Counsel realized this and, since counsel had already developed a very large file P64474US0 on November 17, 2000, counsel withdrew the '939 case in favor of the '236 case. To date counsel has never received a letter addressed to the '236 case indicating the case was in other than pending status and believing that counsel's reference P66004US0, the '939 case was abandoned, counsel continued prosecution in counsel's reference P66474US0, the '236 case. The following further documents were filed in the '236 case and are enclosed with postcard receipts:

1. Copy of the October 20, 2000 original filing and Preliminary Amendment.
2. Copy of the December 20, 2000 Request for Refund and Small Entity Declaration.
3. Copy of the December 20, 2000 Reply to Missing Parts.
4. Copy of the IDS filed January 23, 2001.
5. Copy of the Preliminary Amendment filed March 16, 2001.

It will be seen that counsel thought the '236 application was pending and in good order and this only changed when counsel filed the Second Request for Refund in the '939 case and received Daniel Stemmer's reply of February 26, 2002. Counsel is only now aware that when two applications are filed attempting to nationalize the same PCT application, it is the first filing date that must be continued, albeit that both filing dates

(October 18, 2000 and October 20, 2000) are within the 30 month term. Therefore counsel now finds himself in a situation where neither serial number '236 or '939 are in pending state and the purpose of this Petition Under Rule 182 is to place the first filed application '939 into pending state and to merge all of the documents filed in the '236 application with the '939 application so that counsel has a pending nationalized application for PCT/EP99/02624.

Remembering that counsel had asked that '939 be withdrawn, counsel did receive an Official Letter mailed November 29, 2000 referencing the '939 application entitled "Notice of Cancellation of Assigned Serial Number". Counsel assumed that his request had been complied with, i.e. '939 case had been cancelled and sent that case to storage. It is reiterated that counsel has never received a paper referencing the '236 case suggesting that it had been cancelled, abandoned, or that anything was amiss in this case but rather, counsel continued filing papers in the '236 case preparing it for examination.

REQUEST

Against the backdrop of the above cited facts and attachments and with the very strong assertion that it was and is counsel's intention to nationalize PCT/EP99/02624, it is herewith requested that the Commissioner revive the '939 serial number; merge all of the documents attached hereto which were filed in the '236 case with the '939 case and pass the '939 case on to the Examiner for examination. The following question arises, namely, all of the documents filed in the '236 case identified that application by serial number including the Assignment which was recorded against that number and is there

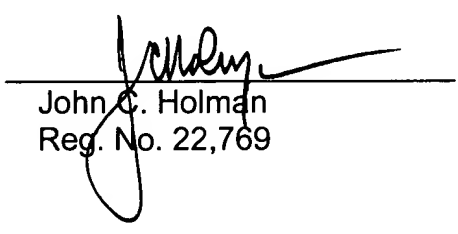
some way when merging these two serial numbers that counsel does not have to have reexecuted all of these documents because of the erroneous serial number?

Early and favorable holding on this Petition is courteously awaited and should there be any questions, please feel free to call undersigned counsel.

Respectfully submitted,

JACOBSON HOLMAN PLLC

By: _____


John C. Holman
Reg. No. 22,769

400 Seventh Street, N.W.
Washington, DC 20004
(202) 638-6666
Atty. Dkt. No.: P66004US0
Date: March 14, 2002

Enclosures: Small Entity Declaration and Request for Refund
Transmittal of Missing Requirements, Declaration and Assignment
Preliminary Amendment
Information Disclosure Statement, PTO-1449, references
Check for \$130